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ABSTRACT

This digest discusses some of the major trends and changes that are taking place in school desegregation in the 1990s. One of the most prominent current trends is the increasing number of court cases that release school districts from court supervision of their desegregation efforts (known as granting "unitary" status). A second important trend is increased attention to access to education and the academic performance of minority children. Several pivotal Supreme Court cases during the 1990s have spelled out procedures for court approval of the dismantling of school desegregation plans. These include: (1) Board of Education of Oklahoma v. Dowell (1991); (2) Freemen v. Pitts (1992); (3) Missouri v. Jenkins (1995); and (4) the Connecticut state case Sheff v. O'Neill (1996). When a school district is freed from court supervision, it is often free to send students back to their neighborhood schools. Although many people believe in the concept of the neighborhood school, the reality is that many urban students return to schools that are segregated and inferior. Researchers with the Harvard Project on School Desegregation have found that school segregation has increased steadily over the past 15 years, particularly in nonsouthern states. It is clear that desegregation has little relevance for many of the nation's largest cities. A number of urban districts are one-sixth or less white, and lack enough white students to desegregate meaningfully. Even within desegregated schools, many argue that segregation still exists under the guise of tracking. Concern about the achievement gap between minority and white students will probably lead to an era of desegregation cases that focus on within-school integration. Monitoring equity within schools has been difficult, and has sparked interest in measures of equity, including those of achievement, extent of special education, grade retention rates, access to services, and other institutional characteristics. The best hope for

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plaintiffs who wish school districts to continue under court supervision is to focus on the issue of "educational vestiges," such as within-school segregation and the academic performance gap between minorities and whites. Efforts to improve the education of students of color must focus on effective school reform regardless of whether or not a school is physically desegregated. (Contains 13 references.) (SLD)

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# DIGEST

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## RECENT CHANGES IN SCHOOL DESEGREGATION

This digest presents some of the major trends and changes that are taking place in school desegregation in the 1990s. One of the most prominent current trends is the increasing number of court cases which release school districts from court supervision of their desegregation efforts (known as granting "unitary" status). The result has been that many urban school districts are moving toward increasing resegregation of their schools as students return to neighborhood schools (Orfield, 1996).

A second important trend in school desegregation is increased attention to access to education and academic performance of minority students (Willis, 1994). Both school districts involved in court cases and those involved in desegregation planning have shifted attention away from a focus on desegregation efforts, which primarily concern student assignment to achieve racial integration, and toward increased attention to issues related to within-school equity and integration. But, as educators and parents are discovering, barriers to minority participation and learning in school are proving to be as difficult to remove as is deliberate segregation.

During the 1970s and 1980s, the focus of desegregation was on the physical integration of African American and white students through such measures as busing, school choice, magnet schools, use of ratios, redrawn school district boundaries, mandatory and voluntary intra- and interdistrict transfers, and consolidation of city districts with suburban districts (Willis, 1994). While many of these efforts are continuing in school districts across the nation, courts are declaring more and more large urban districts unitary (e.g., Denver, CO; Wilmington, DE; Savannah, GA; Kansas City, KS; Cincinnati and Cleveland, OH; Oklahoma City, OK; Buffalo, NY; and Austin, TX). .

In particular, there have been several pivotal Supreme Court cases during the 1990s that have spelled out procedures for court approval of the dismantling of school desegregation plans (Orfield, 1996). Rulings from these cases have provided the legal standards to determine when a local school district could be released from its obligation to maintain desegregated schools. The significance of these pivotal cases, *Board of Education of Oklahoma v. Dowell* (1991), *Freeman v. Pitts* (1992), *Missouri v. Jenkins* (1995), and of a state case, *Sheff v. O'Neill* (1996), is discussed below.

### Recent Desegregation Cases

#### The U.S. Supreme Court

In *Board of Education of Oklahoma v. Dowell* (1991), the U.S. Supreme Court ruled that formerly segregated school districts could be released from court-ordered busing once they have taken all "practicable" steps to eliminate the legacy of segregation. This meant that districts could be freed from court oversight if they had desegregated their students and faculty and met the other requirements of mandatory desegregation, such as transportation and facilities. The court further ruled that school districts are not responsible for remedying local conditions, such as segregated housing patterns (Fife, 1996). In essence, with this ruling, the Supreme Court made it easier for districts to be declared unitary, or to be released from desegregation orders (Orfield, 1996).

In the case of *Freeman v. Pitts*, the 1992 Supreme Court ruling held that Federal district courts can have discretion to order incremental withdrawal of court supervision over school districts (Fife, 1996). In other words, a school district does not need to achieve unitary status in all six of the "Green factors"—student assignment, faculty, staff, transportation, extracurricular activities, and facilities—before being released from court supervision. The Green factors, codified by the Supreme Court decision in *Green v. School Board of New Kent County*, are typical components of a school system where desegregation is mandatory. Thus, the *Freeman* decision effectively weakened the Green standards by allowing schools to desegregate incrementally, although it did not release districts from their obligation to desegregate (Fife, 1996).

*Missouri v. Jenkins* is one of the most complex desegregation cases to date in the United States. Since 1985, the state of Missouri has spent $1.4 billion on the court-ordered desegregation plan for the Kansas City school district. In 1995, however, the U.S. Supreme Court ruled that a desegregation plan does not have to continue just because minority student achievement scores remain below the national average. The state of Missouri could not be required to provide funding for programs and various kinds of school improvement activities, or to pay for a plan aimed at attracting white students from suburban districts for an undetermined amount of time, simply because minority student achievement scores remained below the national average. The state could only be required to do what is practicable for remedying the ves-

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tiges of past discrimination; it was not responsible for remedying inequities that may exist between students within schools (Fife, 1996). Recently, a Federal judge ruled that the state be freed from financial responsibility by approving a settlement paying $315 million that would cut out $100 million in annual state subsidy for school desegregation efforts after 1999. The court ordered that the district narrow the gap in test scores between black and white students by the end of 1998-99 (Hendrie, 1997).

### The Connecticut Supreme Court

In a ruling that has been hailed by civil rights advocates, the Connecticut Supreme Court, in the 1996 case, *Sheff v. O'Neill*, found that the racial and ethnic isolation in the Hartford school district was a violation of the state constitution's protection against segregation, and that the extreme racial and ethnic isolation in and around Hartford schools denied students their constitutionally guaranteed rights to an education. The court ordered state officials to desegregate the schools (Archer, 1996). The state legislature then approved a plan that would allow students to transfer between public school districts throughout Connecticut and enhance the urban schools with magnet and charter schools (Archer, 1997). Although this case is clearly a victory for desegregation advocates, plaintiffs in the case argue that a statewide interdistrict transfer plan will still not integrate Hartford's schools.

### Impact of Court Decisions

Many educators, parents, community members, and politicians are relieved to see an end to the desegregation orders that for years heavily influenced decisions about educational and fiscal policies. Conversely, critics and civil rights advocates argue that the current trend toward dismantling court-ordered desegregation in many school districts is a step backwards toward segregated schooling. Recent studies indicate that school segregation and the creation of school districts with numerous poor students, which have been increasing during the 1990s, are also affecting Latino students. Latino students are increasingly isolated from whites, and are more highly concentrated in high poverty schools, than any other group of students (Orfield, Bachmeier, James, & Eitle, 1997).

## The Return to Neighborhood Schools

When a school district is released from court supervision, it is often free to send students back to their neighborhood schools. Community members, parents, and educators often support a return to neighborhood schools because they believe that desegregation is costly, that it has not accomplished what it was intended to do many years ago, and that it has resulted in meager improvements (Neuborne, 1995). They also hope that whites and middle-class residents who fled during desegregation will return to the schools closer to their homes (Orfield, 1996). Other people claim that African American children would be better off staying in neighborhood schools rather than being transferred out of their communities to unfamiliar and often unwelcoming places. In fact, many minority parents, having lost confidence in the ability of their child's desegregated school to provide an equitable education of high quality, demand a return to neighborhood schools.

Despite this belief in the value of neighborhood schools, the reality is that many urban students return to schools that are segregated and inferior. Often new funding for upgrading school facilities and educational programs is promised but not delivered. However, as is the case with many large urban schools, even an infusion of extra funds is often not enough to transform a school, as schools must struggle with the profound and increasing poverty and joblessness in their local communities. Moreover, in cities that previously used busing measures to desegregate their schools, costs to create new schools and classrooms that had been underutilized for years can run as high as hundreds of million dollars.

## School Resegregation

Gary Orfield and his colleagues at the Harvard Project on School Desegregation have reported that school segregation has increased steadily over the past 15 years, particularly in non-southern states. The increase in school segregation has profound consequences for urban minority students. For example, while only 5 percent of segregated white schools face conditions of poverty among their students, more than 80 percent of segregated African American and Latino schools do (Orfield et al., 1997).

This means that a student who moves from an integrated school back to a segregated neighborhood school will most likely exchange the resources of a middle-class school for a poverty-stricken one, the result of the end of court-mandated busing or desegregation choice plans. High poverty schools have generally lower levels of educational performance and are less likely to prepare students for college than more affluent schools. Researchers such as Wells and Crain (1997) argue that the gradual undoing of desegregation and increasing concentration of urban minority students in high poverty schools cut off access to the full range of middle-class opportunities—impacting on higher education, employment, and future choice of residential community— that a more affluent integrated school would provide.

## Impact on Academic Performance

It is clear that desegregation has little relevance for many of the nation's largest cities: a number of the biggest urban districts are one-sixth or less white, and thus lack a sufficient number of white students to mean-

ingfully desegregate. Desegregation plans in many smaller cities are becoming increasingly ineffective with the tremendous growth of white suburbs and the expansion of inner-city neighborhoods without adjustments to racial balance mandates. Even within desegregated schools, claims persist that segregation still continues under the guise of school tracking and grouping practices. Because of these trends in the 1990s, desegregation planners across the country are increasingly turning their attention from desegregation remedies such as student transfer and reassignment to achieve racial balance to a focus on access, equity, and the academic performance of minority students (Willis, 1994).

As more school districts have fulfilled their responsibilities insofar as the above-described Green factors are concerned, plaintiffs in desegregation cases have shifted their focus to what are sometimes referred to as "educational vestiges." They argue that the educational achievement of racial and ethnic minority students continues to lag behind that of white students in the school district, and that this achievement gap, a vestige of legalized segregation, must be eliminated before a school district can be released from court orders (Lindseth, 1997). This argument is critical, and it will most likely be the subject of further Supreme Court decisions. The gap in performance on standardized test scores between white students and African American and Latino students, and differences in the choice of courses and curriculum available to different groups of students, is leading to serious examination of what happens to minority students within individual schools and classrooms. It will most likely lead to an era of desegregation cases that focus on within-school integration (Willis, 1994).

## Within-School Integration

Currently, several school districts across the country are engaged in desegregation planning and are focusing on provisions that address internal integration rather than the more conventional desegregation measures such as student assignment. Willis (1994) uses the term "within-school integration" to mean "the elimination of all vestiges of segregation from all policies, practices, programs, and activities *within* a district's school" (p.7). The focus of within-school integration is provision of the greatest possible integration and interaction among students and staff regardless of the student composition of the school. Although a school's racial/ethnic enrollment may reflect integration, the school can often engage in segregative practices that negate the benefits of a well-integrated school (Willis, 1994).

Such a situation sparked a desegregation case in Rockford, IL, *People Who Care, et al. v. Rockford Board of Education* (1993). The school district was under District Court order to address within-school integration in its high schools, all of which are racially balanced. The district was also ordered to implement a student assignment plan utilizing controlled choice; to develop programs for significant improvement in instruction and achievement in a subset of elementary schools that for a short period of time will remain minority, racially identifiable; and to integrate all courses and other educational services offered in middle and high school. The court had found the level of internal segregation within racially integrated schools severe, as the district had maintained separation of white and minority students in most courses and in extracurricular activities.

For many school districts engaged in desegregation planning, the emphasis on within-school integration addresses both integrated schools and racially identifiable schools (segregated schools) since a school district often has a combination of both schools. For integrated or racially balanced schools, plans are developed to address equitable participation and performance of minority students compared to white students attending the same schools. In racially identifiable schools, plans are developed to address the quality of education and performance of minority students.

Monitoring equity within schools in the implementation of desegregation plans has often been difficult, in part because of the reliance on inadequate data from school districts. In the past, school districts were not required by the courts to provide discrete information on different groups of students. At best, statistical indicators such as achievement and attendance data were provided for only two student categories: white and minority. More recently, this limited categorization has been considered inadequate as the demographics in school districts change, and as school officials, plaintiffs, and court monitors ask for a more extensive breakdown of data. Going beyond simple separation by race, they seek data disaggregated by poverty status and fluency of English, and equity indicators such as information on enrollment levels in special education, extent of mainstreaming, courses and grades of students, grade retention rates, graduation rates, access to services, participation of parents, etc. (For a complete list of equity indicators developed by the Southwest Center for Educational Equity, see Willis, 1994.)

## Racial Diversity as an Educational Goal

As desegregation cases come to a close, many educators are questioning the extent to which they should attempt to promote racial and ethnic integration without court orders to do so (Hendrie, 1997). As the nation becomes more multicultural, educators argue that public school diversity is more important than ever, since many school districts have retained or implemented school policies, such as the institution of selective admissions criteria to special schools or magnet programs, which sometimes adversely impact minority students.

It is, however, unclear how the judicial system will respond to desegregation efforts, as advocates argue that diversity policies are in the national interest and critics respond that they are unnecessary unless there are specific wrongs to be righted. Legal challenges have already

been brought against two top high schools in the nation: Lowell High School in San Francisco and Boston Latin School in Massachusetts. In San Francisco, Chinese American students who were denied admission brought a lawsuit against the school district, particularly centered on Lowell High School, challenging the 40 percent cap on Chinese American students. Before the court could rule, the school changed its quota policy. Subsequently, a judge upheld the cap but left open the possibility that it might be time to end the policy (Reinhard, 1997). At the Boston Latin School, a suit was brought by a white student who was not admitted despite having higher test scores than African Americans and Latinos who were accepted. A judge ruled in the white student's favor, thus ending over 20 years of racial set-asides at the school.

## Conclusion

The barriers to school desegregation are mounting. The Supreme Court rulings of the 1990s have encouraged more and more school districts to seek unitary status and have "signaled a reluctance by the courts to indefinitely continue Federal court supervision of school districts" (Orfield, 1997). Plaintiffs' best hope for continuing under desegregation orders center on the issue of "educational vestiges," such as within-school segregation, differential course availability, and the educational performance gap between white and minority students. The growing number of poor students of color in inner-city areas makes racial balance plans difficult if not implausible. Thus, efforts to improve the education of students of color must be focused on effective school reform regardless of whether a school or district is physically desegregated or not.

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